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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,123	04/02/2002	Mary Collins	22058-514NATL	5639

EXAMINER	
DEBERRY, REGINA M	

ART UNIT	PAPER NUMBER
1647	

MAIL DATE	DELIVERY MODE
08/06/2007	PAPER

7590 08/06/2007
Mintz Levin Cohn Ferris Glovsky and Popeo
One financial Center
Boston, MA 02111

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/868,123

Applicant(s)

COLLINS ET AL.

Examiner

Regina M. DeBerry

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 May 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 23,28,48-53,55,59-62 and 64-67.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Marianne P. Allen
MARIANNE P. ALLEN
PRIMARY EXAMINER
AKI1647 8/3/07

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Claims 23, 28, 48, 55, 59 and 64 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6-8 and 14 of U.S. Patent No. 6,248,714 B1 in view of Cookson et al., US 6,387,615 B2 (reference of record), Hamelmann et al. (Allergy and Clinical Immunology International, Abstract, Vol. 10/2:59-63, 1998) and King (Journal of the National Medical Association, Abstract, Vol. 91/8:9S-15S, August 1999). The basis for this rejection is set forth at pages 3-5 of the previous Office Action (07 November 2006).

Claims 23, 28, 48-53, 55, 59-62, 64-67 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Collins et al., US Patent 5,710,023 (reference of record) in view of Hamelmann et al. (Allergy and Clinical Immunology International, Abstract, Vol. 10/2:59-63, 1998) and King (Journal of the National Medical Association, Abstract, Vol. 91/8:9S-15S, August 1999). The basis for this rejection is set forth at pages 5-7 of the previous Office Action (07 November 2006).

Claims 23, 28, 48-53, 55, 59-62, 64-67 remain rejected under 35 U.S.C. 103(a) as being obvious over Collins et al., US Patent 6,248,714 B1 in view of Hamelmann et al. (Allergy and Clinical Immunology International, Abstract, Vol. 10/2:59-63, 1998) and King (Journal of the National Medical Association, Abstract, Vol. 91/8:9S-15S, August 1999). The basis for this rejection is set forth at pages 7-9 of the previous Office Action (07 November 2006).

Claims 23, 28, 48-53, 55, 59-62, 64-67 remain rejected under 35 U.S.C. 103(a) as being obvious over Collins et al., US Patent 6,268,480 B1 in view of Hamelmann et al. (Allergy and Clinical Immunology International, Abstract, Vol. 10/2:59-63, 1998) and King (Journal of the National Medical Association, Abstract, Vol. 91/8:9S-15S, August 1999). The basis for this rejection is set forth at pages 9-11 of the previous Office Action (07 November 2006).

Claims 23, 28, 48-53, 55, 59-62, 64-67 remain rejected under 35 U.S.C. 103(a) as being obvious over Collins et al., US Patent 6,214,559 B1 in view of Hamelmann et al. (Allergy and Clinical Immunology International, Abstract, Vol. 10/2:59-63, 1998) and King (Journal of the National Medical Association, Abstract, Vol. 91/8:9S-15S, August 1999). The basis for this rejection is set forth at pages 11-13 of the previous Office Action (07 November 2006).

Applicant states that King et al. is not prior art to the claimed subject matter. Applicant argues that the pending claims are supported by priority application U.S.S.N. 09/211,335, which was filed in December 14, 1998.

Applicant's arguments have been fully considered but are not deemed persuasive. The Examiner stated in the previous Office Action (22 February 2006, page 2) that priority to the applications listed in the first sentence of the instant specification, the instant application's BIB data sheet and the instant application's oath, all fail to agree. The Examiner stated that because it is unclear which application receives the appropriate priority, 12/13/99 is the effective filing date used for the purpose of apply prior art. The Examiner stated that appropriate correction is required using the proper conditions set forth under 35 USC 120, 121 or 356 for receiving the benefit of the earlier filing date for the instant application. The instant specification (page 1, lines 1-3) states, "this application is a continuation-in-part of application Ser. No. 08/841,751, filed April 30, 1997, which was a divisional application of application Ser. No. 08/609,572, filed March 1, 1996". The oath for the instant application states that, "the specification was filed on 13 June 2001, as PCT application PCT/US99/29493, and Nationalized in the United States as serial number 09/868,123". The oath list application 09/211,335 but does not disclose the relationship between 09/211,335 and instant application 09/868,123. The PALM data states that application 09/868,123 is a national stage entry of PCT/US99/29493, International Filing Date: 12/13/1999. The PALM data states that PCT/US99/29493 is a CIP of application 09/211,335. As was stated above, none of the information agrees.

The scientific reasoning and evidence as a whole indicates that the rejections should be maintained.

Please note that the King et al. reference will be removed once the priority is corrected. However, Applicant is advised that all of the instant rejections can still be made and will be reapplied to the instant claims without the King et al. reference.

Continuation of 13. Other: This is a supplemental Advisory Action. A Notice of Appeal was filed by Applicant on 07 May 2007. This supplemental Advisory Action is being sent out because the Examiner inadvertently checked box number 1a instead of checking box number 2 (i.e. NOTICE OF APPEAL) in the previous Advisory Action (30 July 2007).

DeBerry, Regina

Hi Gloria,

This is a supplemental Advisory Action. The supplemental Advisory Action is being sent out because I inadvertently checked box number 1a instead of checking box number 2 (i.e. NOTICE OF

APPEAL) in the previous Advisory Action (30 July 2007). Applicant filed A Notice of Appeal on 07 May 2007. I didnt see this, when I sent out the last Advisory Action.

Please let me know if I need to do anything else.

Thank you

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